

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

THOMAS WALTER KILLILEA
MARTHA A. KILLILEA

Claim No. CU -3105

Decision No. CU- 6114

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimants:

Daisy Richards Bisz, Attorney at Law

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THOMAS WALTER KILLILEA for \$94,945.68 based upon the asserted ownership and loss of certain real and personal property and a stock interest in a Cuban corporation. The record discloses that MARTHA A. KILLILEA, the wife of THOMAS WALTER KILLILEA, pursuant to the Community Property Law of Cuba had a 1/2 interest in property acquired by her husband subsequent to their marriage. Accordingly, MARTHA A. KILLILEA is joined as claimant in this matter. Claimants have been nationals of the United States since birth.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claim has been asserted as follows:

1. 1/2 interest in a leasehold of sugar cane farm	\$41,873.00
2. 1/2 interest in cane crop ready to harvest	13,125.00
3. Bank Account	14,947.68
4. 220 shares of Compania Agricola Parillo, S.A.	<u>25,000.00</u>
Total	\$94,945.68

Leasehold in Farm and Cane Crop

Based on the entire record including the original agreement between claimant, THOMAS WALTER KILLILEA, and Harvey F. Clover dated August 23, 1936, a receipt for the purchase price, and affidavits of two individuals familiar with the facts, the Commission finds that claimants owned a 1/2 leasehold interest in a sugar cane plantation known as "La Victoria" located in Ciego de Avila, Camaguey which measured about 383.23 acres, and a 1/2 interest in the cane crop on the plantation.

The Agrarian Reform Law of May 17, 1959, published in the Cuban Official Gazette on June 3, 1959, established the National Agrarian Reform Institute and provided for the expropriation of rural properties and distribution among peasants and agricultural workers. The Fifth Transitory Provision provided that until regulations for the Law were promulgated, it should be applied through resolutions of the National Agrarian Reform Institute. The regulations for carrying out the expropriation of such rural property were contained in Law 588, published in the Official Gazette (No. 191) on October 7, 1959.

Claimant, THOMAS WALTER KILLILEA, states that "La Victoria" was taken by the Government of Cuba in December, 1960. The Commission finds in the absence of evidence to the contrary, that the plantation was taken on December 15, 1960 pursuant to the provision of the Agrarian Reform Law.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The evidence includes an affidavit by the former Assistant to the President of Baragua Industrial Corporation of New York at Havana, Cuba, in which he states that "La Victoria" was located within the Central Baragua Sugar Estates of the Punta Alegre Sugar Corporation, that the capacity or quota assigned to "La Victoria" by the Cuban government was 837,462 arrobas, that the fair market value of the leasehold was \$10 per 100 arrobas, resulting in a figure of \$83,746.20 and that the value of the cane crop ready for harvest was \$26,250.00 based on 750,000 arrobas at \$3.50 per 100 arrobas. Another affidavit by the former employee and administrator of the plantation certifies the same values to the leasehold interest and the cane crop.

Based on all the evidence of record including information available to the Commission regarding the value of similar property in Cuba, the Commission finds that the asserted values are fair and reasonable and concludes that on December 15, 1960, the date of loss, the value of the leasehold interest in "La Victoria" was \$83,746.20 and the value of the cane crop was \$26,250.00. Accordingly, each claimant suffered losses of \$20,936.55 and \$6,562.50 in this connection.

Bank Account

Based on the evidence of record including a copy of a statement of a bank account with the Havana branch of the Chase Manhattan Bank which shows a balance as of September 30, 1960 of \$14,715.75 (the peso being on a par with United States dollar), the Commission finds that claimants owned the bank account subject of this claim.

Law 989, published in the Official Gazette on December 6, 1961, in its terms effectively confiscated all goods and chattels, rights, shares, stocks, bonds and other securities of persons who left the country of Cuba. From the foregoing, the Commission finds that claimants' above-described bank account, totalling 14,715.75 pesos, was taken by the Government of Cuba on December 6, 1961. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Compania Agricola Parillo, S.A. (Parillo)

The record contains two certificates representing a total of 220 shares of Parillo issued to claimant THOMAS WALTER KILLILEA in 1956 and 1958. Based on the evidence of record the Commission finds that claimants each owned a 1/2 interest in 220 shares of stock in this corporation.

In our decision entitled the Claim of Bangor Punta Corporation, et al (Claim No. CU-2156), which we incorporate herein by reference, we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$372.9920.

On the basis of evidence in the record in the instant case, the Commission finds that these claimants come within the terms of the Bangor Punta decision, and that they each suffered a loss in the amount of \$41,029.12 within the meaning of Title V of the Act.

Recapitulation

Claimants' losses may be summarized as follows:

	<u>Item</u>	<u>Date of Loss</u>	<u>Value</u>
<u>THOMAS WALTER KILLILEA</u>	Leasehold	December 15, 1960	\$20,936.55
	Crop	December 15, 1960	6,562.50
	Bank Acct.	December 6, 1961	7,357.87
	Stock	August 6, 1960	41,029.12
<u>MARTHA A. KILLILEA</u>	Leasehold	December 15, 1960	\$20,936.55
	Crop	December 15, 1960	6,562.50
	Bank Acct.	December 6, 1961	7,357.88
	Stock	August 6, 1960	41,029.12

Accordingly the Commission concludes that claimants suffered losses in the aggregate amount of \$151,772.09 within the meaning of Title V of the Act.

It will be noted that the total amount of the loss found herein is in excess of the amount asserted by the claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amount which may be asserted by the claimant as to the extent thereof.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant claim, it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
<u>THOMAS WALTER KILLILEA</u>	August 6, 1960	\$41,029.12
	December 15, 1960	27,499.05
	December 6, 1961	<u>7,357.87</u>
		\$75,886.04
 <u>MARTHA A. KILLILEA</u>	 August 6, 1960	 \$41,029.12
	December 15, 1960	27,499.05
	December 6, 1961	<u>7,357.88</u>
		\$75,886.05


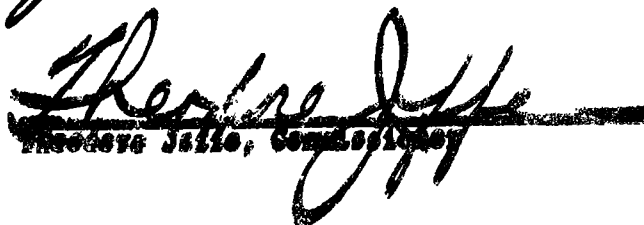
CERTIFICATION OF LOSS

The Commission certifies that THOMAS WALTER KILLILEA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Five Thousand Eight Hundred Eighty-Six Dollars and Four Cents (\$75,886.04) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that MARTHA A. KILLILEA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Seventy-Five Thousand Eight Hundred Eighty-Six Dollars and Five Cents (\$75,886.05) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

MAK 17 1971


Lytle S. Garlock, Chairman

Theodore J. Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)